



*Fraud response –
recovering lost money
through the civil courts*

28 JUNE 2018

The webinar will begin shortly...

Business & Management
20 minute lunch



corporatepartnerships@moneycorp.com

Webinar

Fraud response

Recovering lost money through the civil courts

Frances Coulson
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Director, Fraud Advisory Panel

Thursday 28 June 2018



Partner
Moon Beaver Solicitors

Purpose of today's webinar

- Provide an overview of the civil justice process
- Explain the types of cases most suitable for its use
- Highlight some examples of recent cases



Who we are

- We are the UK's leading anti-fraud charity and voice of the counter fraud community.
- We work to improve fraud resilience across the UK and around the world by championing best practice and (where appropriate) law reform.
- Our members cover the full spectrum of counter fraud professionals.

Working together to defeat fraud

Fraud – act fast

Notify

Civil action can run along criminal

Gather information

Take urgent advice

Consider wider risks

Funding action and adverse costs risk

Fraud – protective action

- Freezing orders
- Search and seize orders
- Pre-action disclosure
- Norwich Pharmacal orders

Fraud – civil action

- Small claims
- Fast and Multi track
- High Court
- Consider costs benefit
- International assistance needed?

Court process

- Claim
- Notice of intention to defend/default judgment/defence/reply
- Disclosure
- Witness statements
- Case management/budgeting
- Trial – time to trial

Court process

- Enforcement
- Third-party debt orders
- Charging orders
- Seizure of goods
- Insolvency
- International enforcement

Court process

- Use of insolvency process
- Restore and wind-up company or appoint
- Wide powers of investigation
- No recovery no fee litigation against fraudsters and associates
- Dividend after costs if recovery

Fraud – suitable cases for civil action

- Size of claim
- Assets
- Type of fraudster
 - employees/supplier
 - professional SOCG
 - lower level domestic

Use our interactive online tool to understand more about the criminal and civil justice systems and how the two can interact.

It has been specifically created for smaller businesses.

www.fraudadvisorypanel.org/uk-victims/

Free resources at www.fraudadvisorypanel.org



The criminal and civil justice systems in England and Wales

Introduction

Important differences exist between UK civil and criminal proceedings that have implications for fraud investigations, including evidential and interview requirements and the burdens of proof that must be met in court. The main differences between the criminal and civil justice systems in England and Wales are described below.

The two systems can work together. There is nothing to prohibit a civil claim following a criminal claim, or vice versa – or even both happening simultaneously (called parallel proceedings). Read our factsheet on [parallel sanctions](#) for more information.

Simultaneous proceedings are allowed unless the defendant would face a real risk of serious prejudice which may lead to injustice in either the civil proceedings, the criminal proceedings or both. For instance, serious prejudice would occur if there was significant adverse publicity generated by both cases occurring simultaneously.

Summary of the main differences

	Criminal	Civil
Focus	<ul style="list-style-type: none"> Criminal prosecutions focus on bringing offenders to justice (punishment). 	<ul style="list-style-type: none"> Civil cases focus on victim redress, such as a payment of money or transfer of assets.
Control and flexibility	<ul style="list-style-type: none"> Criminal prosecutions are generally controlled by public bodies. There is little scope for the victim of a fraud to influence the proceedings. 	<ul style="list-style-type: none"> Civil cases are private actions in which individuals can protect their legal rights, and as such public bodies very rarely have any interaction with such cases. There is a great deal of control available to anyone bringing a civil claim and, generally, the claimant (the victim) will retain complete control over the proceedings and will be able to make decisions over whether and how to continue them.

THE CRIMINAL AND CIVIL JUSTICE SYSTEMS

FRAUD FACTS

Issue 18 August 2012

INFORMATION FOR ORGANISATIONS



Civil recovery: a summary of key measures

Civil recovery should form part of any organisation's fraud risk management strategy. It can be an effective way to recover some or all of the losses incurred as a result of being defrauded and can act as an important deterrent to would-be fraudsters. This factsheet outlines some of the key civil recovery measures available to businesses.

Introduction

This factsheet is a quick reference guide for companies and unincorporated businesses that become the victim of fraud or other criminal acts causing financial loss. It sets out the actions that a business can consider to recover losses through civil (as opposed to criminal) measures.

Civil recovery should form an essential part of an organisation's complete fraud risk management strategy and not be seen as an add-on. Taking direct action against anyone who defrauds your business can serve as an effective deterrent to would-be fraudsters and can help to minimise the losses suffered.

Professional legal and accountancy advice should be sought to maximise the prospects of successful recovery actions.

Fraud is a criminal act. Why should my business consider a civil course of action to recover fraud losses?

Businesses should always consider reporting instances of suspected fraud to law enforcement. This will usually be to Action Fraud – the UK's national fraud reporting centre. Careful consideration should be given to the timing of any such report as the involvement of a law enforcement agency can impact on your ability to recover your losses through the civil courts.

Businesses should note that only a minority of fraud and forgery reports made to the police receive active police attention. This is because:

- Authorities may collate information received and may only take investigative action at a later date if a sufficient number of allegations or reports are also made by other victims.
- The fraud reported by your business may be a small part of a wider matter requiring coordinated assistance from other law enforcement agencies.
- Authorities may not have the available resources to respond at all or in a timely manner to the allegation of fraud made by your business.
- Law enforcement agencies focus on giving a criminal conviction as a punishment and deterrent. Gaining financial redress for your business is not a focus of law enforcement agencies.

Why civil recovery?

Civil recovery proceedings can help to maximise the opportunities of restitution without relying on the final and often lengthy outcome of a criminal prosecution. Conducted in the right way, some redress obtained during the course of a civil investigation can be used in subsequent or parallel criminal investigations. See our separate factsheet on [Overview of fraud sanctions](#) for more information.

Civil recovery methods are increasingly varied as a result of closer cooperation between international jurisdictions and the aspects of businesses to ensure recovery forms an integral part of their fraud risk management strategies.

Civil recovery measures

Businesses should consider a range of civil recovery measures when appraising their options to recover their loss. Some of the key civil recovery tools are:

- claim against perpetrator(s)
- claim against party in possession, use or control of misappropriated assets
- claim against party with a duty of care
- insolvency proceedings
- freezing orders
- injunctories.

These tools are not mutually exclusive, and it may be advisable to consider more than one of the civil recovery tools available.

Claim against perpetrator(s)

When sufficient evidence has been obtained a claim can be brought directly against the suspected perpetrator(s). The claim may be as simple as a request for repayment or a claim filed in the civil courts seeking the return of monies paid on the basis of misrepresentation and/or obtained by unjust enrichment.

Claim against party in possession, use or control of misappropriated assets

The perpetrator may have attempted to cover their wrongdoing by placing assets in the names of close and trusted individuals or by transferring assets into the ownership of companies and trusts. For this reason it may be necessary to commence proceedings against a party other than the suspected perpetrator(s).

FRAUD FACTS

Issue 19 August 2012

INFORMATION FOR ORGANISATIONS



Civil recovery: a glossary of common terms

Understanding the UK justice system and the civil and criminal remedies available to you can be confusing. This factsheet explains some of the most common terms used.

Common terms

Bankruptcy order
A formal court order declaring an individual bankrupt and specifying the term of the bankruptcy (usually 12 months) together with other special conditions. The bankrupt's movable property is then distributed to creditors.

Bankruptcy petition
Creditors (either individual (y or as a group) can petition to have an individual placed into bankruptcy if they are owed money (a total of £750 or more) by that individual. The petition must be lodged in a court and the official receiver or a trustee in bankruptcy appointed over the individual's estate to investigate, collect in and realise assets, agree creditors' claims and pay dividends to the admitted claimants.

Civil litigation
The process of one party (the 'claimant') bringing a court case (or action) against another party (the 'defendant') in a civil court, eg. the High Court. Civil litigation requires the claimant to prove their case to the civil standard of proof.

Civil recovery
The process by which a claimant (see civil litigation) may bring an action against a defendant to recover any losses the claimant may have suffered as a result of the defendant's fraud, misrepresentation, breach of contract, or other duty.

Civil standard of proof
Civil litigation requires the claimant (see civil litigation) to prove their case 'on the balance of probabilities'.

Confiscation
An action brought by the Crown against a defendant in criminal litigation who has been found guilty of, or pleaded guilty to,

a crime of an acquisitive nature. The Crown, in a criminal court, must prove 'on the balance of probabilities' that the defendant has benefited from their crime and has assets available for confiscation. Confiscation is separate from any sentence or punitive fines the court may impose on a defendant as a criminal penalty.

Criminal litigation
The process by which the Crown – via a law enforcement authority – prosecutes a defendant for an offence contravening criminal law in a criminal court, eg. a Crown Court. It is possible to bring a private prosecution against a defendant, but this is rare. Criminal litigation usually requires the Crown to prove its case to the criminal standard of proof (see confessions).

Criminal standard of proof
Criminal litigation usually requires the Crown to prove its case 'beyond reasonable doubt' (but see confessions).

Disclosure order
A court order requiring the person or organisation to whom it is addressed to produce to the claimant the information specified in the order (see civil litigation).

Freezing order
A court order preventing the person to whom it is addressed from dissipating specified assets which may or may not have been acquired through the defendant's culpable act. That person can be the defendant but may also be a defendant's relative, friend, financial adviser or business associate.

A freezing order allows time for the claimant (see civil litigation) to prepare their case against the defendant, during which time the claimant may investigate the full extent of the loss suffered and the

extent of the defendant's ability to pay any recovery order which may be granted. A 'look-aside' freezing order may be recognised in other jurisdictions around the world, preventing a defendant from dealing with their assets wherever they may be.

Moratorium
A company intending to propose a voluntary arrangement to its creditors may apply to the court for a moratorium. During the period for which a moratorium is in force no petition for the winding up of the company may be presented, no resolution or order for the winding up of the company, and no application for administration of the company may be made.

Official receiver
A civil servant who is an employee of the Insolvency Service will act either as a trustee in bankruptcy for an individual(s) who is (or are) made bankrupt or as a liquidator for a company. In both cases, an insolvency practitioner can replace the official receiver at the request of the creditors.

Provisional liquidation
Subsequent to the presenting of a petition to wind a company up, a provisional liquidator may be appointed to carry out such functions as the court may confer on them in the period before an order to wind up the company is made.

Recoveryship
Where the defendant's assets include businesses or complex investment structures, it may be necessary to have the court appoint a receiver to investigate and secure the defendant's assets in cases where it can be shown that they are at risk of dissipation. Receivers can perform this

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3 October 12:30pm

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